

1 7198

RECORDATION NO. _____ Filed & Recorded

OCT 26 1973 -10 22 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 23, 1973

among

GENERAL MOTORS CORPORATION,

**THE FIRST PENNSYLVANIA
BANKING AND TRUST COMPANY,**

as Trustee,

and

**RICHARDSON DILWORTH and
ANDREW L. LEWIS, JR.,
Trustees of the Property of Reading Company**

**Filed and recorded with the Interstate Commerce Commission pursuant
to Section 20c of the Interstate Commerce Act on _____, 1973,
at _____ .m., recordation number _____ .**

CONDITIONAL SALE AGREEMENT dated as of October 23, 1973, among GENERAL MOTORS CORPORATION (hereinafter called the Vendor or Builder as more particularly set forth in Article 25 hereof), RICHARDSON DILWORTH AND ANDREW L. LEWIS, JR., Trustees of the property of READING COMPANY (hereinafter called the Debtor and said Trustees together with their successors in interest being hereinafter called the Trustees or collectively called the Guarantor or the Lessee), and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania banking corporation, as trustee under a trust agreement dated as of the date hereof (hereinafter called the Trust Agreement) with Pioneer Trust & Savings Bank (such trustee being hereinafter called the Vendee).

WHEREAS, on the 23rd day of November, 1971, the Debtor filed a petition for reorganization under Section 77 of the Bankruptcy Act in the United States District Court for the Eastern District of Pennsylvania and such petition was duly approved as properly filed by order entered on said date by said Court (the proceedings with respect thereto being hereinafter called the Reorganization Proceedings and said Court being hereinafter called the Court), and the Trustees were duly qualified as trustees of the property of the Debtor on January 24, 1972;

WHEREAS, the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex A hereto (hereinafter called the Equipment); and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex B (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Vendee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Financing.* This Agreement provides for the purchase by Vendee from the Vendor of Equipment delivered prior to December 31, 1973, such Equipment to be financed pursuant to a Finance Agreement (hereinafter called the Finance Agreement) between Central-Penn National Bank, as Agent (hereinafter called the Agent) and The Penn Mutual Life

Insurance Company (hereinafter called the Investor) dated as of the date hereof. Payment for such Equipment shall be made in accordance with the provisions of Article 4 hereof, the Finance Agreement and the other agreements referred to therein.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex A hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment will be new railroad equipment.

Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there may be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Vendee at the place or places within the United States of America specified in Annex A hereto (or if Annex A does not specify a place or places, at the place or places within the United States of America designated from time to time by the Vendee), transportation costs, if any, prepaid, in accordance with the delivery schedule set forth in Annex A hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and put into service by the Lessee on or before December 31, 1973 (hereinafter called the Final Closing Date), shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Guarantor shall be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Guarantor shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Guarantor) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Guarantor) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee on the date of such Certificate of Acceptance and are marked in accordance with Article 10 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 14 hereof. The Builder and the Guarantor represent and warrant to, and agree with, the Vendee that no unit of the

Equipment will be delivered to or used by the Guarantor or any other persons unless the same shall first be duly subjected to this Agreement and the Lease.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex A hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 4) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 4) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$6,150,000 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) and the Guarantor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than \$6,150,000 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in not more than three groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called a Group) unless a greater number shall be agreed to by the parties hereto. The term "Closing Date" with respect to any Group shall mean such date (not earlier than October 1, 1973 and not later than the Final Closing Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Guarantor, as shall be fixed by the Guarantor by written notice delivered to the Vendee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group an amount equal to 30% of the aggregate Purchase Price of such Group.

(b) In 59 consecutive quarterly instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for such Equipment being herein called the Conditional Sale Indebtedness) shall be payable on each January 1, April 1, July 1 and October 1, commencing April 1, 1974, to and including October 1, 1988 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 10.25% per annum. Such interest shall be payable, to the extent accrued, on April 1, 1974, and on each Payment Date thereafter. The principal amount of Conditional Sale Indebtedness payable on each of the Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each of such Payment Dates shall be substantially equal and such instalments of principal will completely amortize the Conditional Sale Indebtedness.

The Vendee will furnish to the Vendor and the Guarantor promptly after the last Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at the rate of 11.25% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as pro-

vided in Article 7 hereof, the Vendee shall not have the privilege of pre-paying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment between the Builder and Central-Penn National Bank, as agent (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 25 hereof).

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date in respect of any Group, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of the third paragraph of this Article 4 with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall concurrently pay or cause to be paid to the Builder the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 4 and in Section 6 of the Assignment and the documents required by Section 6 of the Assignment shall have been delivered;

(b) no event of default of the Guarantor specified herein or Event of Default of the Lessee under the Lease, nor any event which with lapse of time and/or demand provided for herein or in the Lease would constitute such an event of default or Event of Default, shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinion of counsel required by § 15 of the Lease and (ii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 7, 14, 16 and 17 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equip-

ment" (as herein defined in this Article 4), and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Guarantor and the Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments received by the Vendee or any assignee of the Vendee under § 10 of the Lease, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 15 days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a), (b)

and (c) which were received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default and which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 15 days after, the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It being further understood that the "income and proceeds of the equipment" shall in no event include any amount paid to the Vendee or its assignees by the Builder or its assignees pursuant to the Builder's Agreement dated October 23, 1973 among the Vendee and the Builder (in consideration for the Vendee's transfer of all rights in and to this Agreement). It is further specifically understood and agreed that the failure to make any of the payments under (b) of the third paragraph of this article or any other payments hereunder for the reasons enumerated in this paragraph constitute an event of default as defined in Article 16(a). It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments or obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Guarantor as provided in this Agreement. Any and all additions to the Equipment (except communications, signal and automatic control equipment or devices having a similar use which have been added to such unit by the Guarantor, the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commis-

sion, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment, and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines, and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured

by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. *Maintenance and Repair; Casualty Occurrences.* The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness with respect to such

units or units and the Vendee will, at its own expense, promptly furnish the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

ARTICLE 8. *Obligations of Guarantor.* The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 4 hereof and interest thereon and the due and punctual performance of all obligations of the Vendee under this Agreement, and unconditionally guarantees to the Vendor that all sums payable by the Vendee under this Agreement (except for the sums payable by the Vendee pursuant to subparagraph (a) of the third paragraph of Article 4 hereof) will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Vendee in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Vendee of any of the rights of the Vendor hereunder; *provided, however*, in the event

that there shall have occurred an event of default under the terms of this Agreement and the Vendor shall have made a Declaration of Default under Article 16, the maximum payment which the Guarantor shall be obligated to pay is (a) the entire unpaid indebtedness in respect to the Purchase Price of the Equipment, together with interest thereon then accrued and unpaid, and any additional accrued interest from the date of the Declaration of Default at the rate specified in Article 4 on the unpaid indebtedness and interest, together with any other amounts then due and owing by the Vendee under this agreement, less (b) the total net proceeds, if any, of any sale of the Equipment pursuant to Article 17 herein, or, in the event that there is not a sale, the amount which the Lessee is entitled to credit pursuant to subparagraph (x) of paragraph E. of § 10 of the Lease.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 4 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor; *provided, however*, that after the payment by the Guarantor to the Vendor of all sums payable by it under this Agreement, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Vendee by reason of such payment, to the extent, but only to the extent, that the Vendee has received "income and proceeds from the Equipment" (as defined in Article 4 hereof) prior to the Guarantor's payment hereunder and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 4, of sums payable by the Vendee to the Vendor hereunder.

The obligations of the Guarantor herein shall be limited to the payment of amounts owing hereunder and not paid by The First Pennsylvania Banking and Trust Company, not in its individual capacity but solely as trustee for the benefit of Pioneer Trust & Savings Bank pursuant to the Trust Agreement, the Lease or the Lease Assignment, and in no event shall such guaranties create any right of reimbursement of the amounts so paid; provided, however, that nothing in this paragraph shall limit the right of any beneficiary of the guaranty created by this Article 8 to proceed directly against the Guarantor without first proceeding against The First Pennsylvania Banking and Trust Company, as trustee, and without exercising any other remedy.

It is hereby expressly understood and agreed that any and all obligations of the Guarantor hereunder for the payment in full of all indebtedness in respect of the Purchase Price of the Equipment, damages, claims or any other moneys payable to or in favor of the Vendor pursuant to this Agreement, including but not limited to those arising out of any breach or termination of this Agreement, or otherwise, together with interest thereon as herein provided to the date of payment thereof, shall be and deemed to be necessary costs and expenses of administration incurred by the Trustees in the Reorganization Proceedings and shall rank equally and ratably with all other expenses of administration of the Trustees, except the obligations of the Guarantor under that certain refinancing agreement with the United States dated as of October 1, 1973 with respect to 57 diesel locomotives, and except trustees' certificates heretofore or hereafter issued by the Trustees; and, without limitation of the foregoing, to the extent that the free assets are not sufficient to pay in full in cash such obligations, such obligations, together with interest thereon as herein provided, shall, if and insofar as legally permissible, be paid in full in cash out of the lien assets prior to any payment or other distribution being made to the Bondholders.

The obligations of the Guarantor hereunder shall terminate upon an assignment of the Guarantor's rights and obligations under the Lease pursuant to the provisions of Section 12 of the Lease, except as to obligations arising prior to such assignment.

For the purpose of this Agreement:

(a) The term "free assets" shall mean any and all property and assets of the Trustees and the Debtor's estate of every kind and description, tangible and intangible (including cash on hand and on deposit), not subject to mortgage, pledge, lien, trustees' certificates, equipment trusts or other encumbrances.

(b) The term "lien assets" shall mean any and all property and assets of the Trustees and the Debtor's estate of every kind and description, tangible and intangible, subject to the lien of the mortgage securing the Bonds.

(c) The term "Bonds" shall mean any bonds issued by the Debtor, including the following: First and Refunding Bonds, Series D, and First

and Refunding Bonds, Series E, which Bonds are secured by the assets and property of the Debtor's estate described in the mortgage and supplements thereto.

(d) The term "Bondholders" shall mean the holders of any of the foregoing Bonds issued by the Debtor.

ARTICLE 9. *Reports and Inspections.* On or before March 31 in each year, commencing with March 31, 1975 the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Guarantor's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on both sides of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Guarantor or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Guarantor or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 12. *Possession and Use.* The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*,

that so long as the Lessee shall not be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Equipment. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as an event of default specified in Article 16 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Debtor or any affiliate of the Debtor (or any other railroad company approved by the Vendor), or upon lines of railroad over which the Debtor or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Debtor or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America, and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good

faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor, or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and subject to the provisions of Article 7 hereof shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all the Equipment.

Builder warrants that each unit of the Equipment is of the kind and quality prescribed in the Specification and is suitable for the ordinary purposes for which such equipment is used.

Builder further warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before each unit of Equipment has been operated 250,000 miles whichever event shall first occur. Builder agrees to correct any such defect, which examination shall disclose to Builder's satisfaction to exist, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of Builder's obligation with respect to such defect under this warranty.

Builder warrants specialties not of its own specification or design to the same extent that the Suppliers of such specialties warrant such items to Builder.

There are no warranties, expressed or implied, made by Builder except the warranties set out above.

The Builder shall defend any suit or proceeding brought against the Vendee so far as based on a claim that the Equipment or any part thereof, furnished under this Agreement, constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same and the Builder shall pay all damages and costs awarded therein against the Vendee.

In case the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of the Equipment or part is enjoined, the Builder shall, at his option and at his own expense, either procure for the Vendee the right to continue using the Equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing, or remove the entire equipment and refund the purchase price and the transportation and installation costs thereof.

The Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Builder for patent infringement by said Equipment or any part thereof.

ARTICLE 15. *Assignments.* The Vendee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Guarantor) and (ii) provides

that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

The Reorganization Proceedings shall not be dismissed or terminated nor shall the trust estate be surrendered by the Trustees or their successor or successors, unless, (a) as a condition of such dismissal or termination or such surrender, all of the obligations then existing or to accrue of the Trustees under this Agreement shall be assumed as a general obligation by the Debtor's successor pursuant to a plan of reorganization approved in the Reorganization Proceedings or by any other railroad or Federal corporation acquiring all or substantially all of the lines of railroad of the Debtor or the Guarantor's interest under the Lease or as an obligation, having the same status and priorities as those of the Trustees under this Agreement, by any receiver or receivers in equity, or trustee or trustees, that shall succeed the Trustees, or (b) payment in full in cash (or provision therefor satisfactory to the Vendor) is made to the Vendor of all indebtedness in respect of the Purchase Price of the Equipment, damages, claims, or any other moneys payable to or in favor of the Vendor pursuant to this Agreement, together with interest thereon as herein provided to the date of payment thereof.

In case of any sale or conveyance of all or substantially all of the lines of railroad comprised in the trust estate, the purchaser, or transferee of the purchaser, shall not be at liberty to refuse to accept performance of this Agreement or to disaffirm it and any such purchaser and any such transferee shall assume and agree to perform each and all of the obligations of the Trustees hereunder, unless provision is made for the payment to the Vendor as provided above in clause (b) of the next preceding paragraph.

Whenever used in this Agreement, the term "Trustees" shall be deemed to mean any corporation (including the Debtor), receiver or receivers in equity, trustee or trustees, purchaser or transferee of any purchaser which shall have assumed and agreed to perform each and all of the obligations and covenants of the Trustees hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obliga-

tions of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Vendee or the Guarantor of their respective obligations to the Builder contained or referred to in Articles 2, 3, 4, 6, 8 and 14 hereof and this Article 15, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Guarantor, as the case may be, against and only against the Builder.

In the event of any such assignment or successive assignments by the

Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Vendee will, whenever requested by the assignee, change the markings on both sides of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date with respect to such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts or copies of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on the Closing Date the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Vendee and the Guarantor of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received, and the Guarantor will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the highest large business prime rate of interest of leading New York City banks in effect on such Closing Date.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing (determined without regard to, but without diminishing the effectiveness of the limitations provided for in the last paragraph of Article 4 hereof or in Article 23 hereof), to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder and such default shall continue for 15 days; or

(b) The Vendee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, including but not limited to any default by the Guarantor, as Lessee, under the Lease, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A decree or order is entered in the Reorganization Proceedings preventing or disabling the Trustees from performing any of their obligations under this Agreement; or

(e) If the obligations of the Guarantor hereunder are assumed by another corporation or by the Debtor's successor pursuant to a plan of reorganization for the Debtor approved in the Reorganization Proceedings (such corporation or successor being hereinafter called the Successor) and either

(i) A petition for reorganization under Section 77 of the Bankruptcy Act as now constituted or as said Section 77 may be hereafter amended shall be filed by or against the Successor, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the assumed obli-

gations of the Successor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(ii) Any proceedings shall be commenced by or against the Successor for any relief which includes, or might result in, modification of the assumed obligations of the Successor under this Agreement under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Successor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Successor or for the property of the Successor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Vendee and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand,

and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 12 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee, the Debtor or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee, the Debtor or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and

aids and any available trackage and other facilities or means of the Vendee, the Debtor or the Guarantor, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Debtor or the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee set forth in Article 12 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Guarantor or the Debtor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee, the Debtor and/or the Guarantor requiring specific performance hereof. The Vendee, the Debtor and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Debtor and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee, the Debtor and the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Vendee, before the expiration of the 30-day period described in the proviso below,

should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further*, that if the Vendee, the Guarantor or any person (other than the Debtor) notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell it or continue to hold it pending sale as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Debtor, the Guarantor and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 12 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Debtor, the Guarantor or any other party claiming from, through or under the Vendee, the Debtor or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the

Vendor shall specify a different place or places, in which case the sale shall be held as such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Builder, the Vendee, the Debtor and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Builder, the Vendee, the Debtor and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee, the Debtor or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee, the Debtor or the Guarantor shall not otherwise alter or affect the Vendor's rights or the Vendee's, the Debtor's or the Guarantor's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's, the Debtor's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail

to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. *Recording.* The Vendee or the Guarantor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further

instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee and the Guarantor will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Guarantor.

ARTICLE 22. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, *The First Pennsylvania Banking and Trust Company, 1200 Chestnut Street, Philadelphia, Pa. 19101*
attention of Corporate Trust Department,

(b) to the Guarantor, at Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107, attention of Secretary and Treasurer,

(c) to the Builder, at Electro-Motive Division, LaGrange, Illinois 60525, attention of Secretary and Treasurer,

*PPD
HLS
R.D.
HLS*

(d) to any assignee of the Vendor, or of the Vendee, as such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Guarantor, by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendee, the Debtor or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement. The liabilities and obligations of the Trustees hereunder are the liabilities of such Trustees, or any or all of them, solely as Trustees of the property of the Debtor, and not individually.

The obligations of the Vendee under the first paragraph of Article 7 and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 5, 6, 8, 9, 12 and 16 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect, except in the event that the rights of Lessee under the Lease are assigned pursuant to the provisions of Section 12 thereof. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 16 hereof.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee, while in form purporting to be the representations, undertakings and agreements of the Vendee, are nevertheless each and every one of them, made and intended not as personal representations, undertakings and agreements by the Vendee or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Vendee not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and that no personal liability

or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or any beneficiary of the trust under which the Vendee is acting as trustee on account of this Agreement or on account of any representation, undertaking or agreement of the Vendee or any beneficiary under the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

ARTICLE 24. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of Pennsylvania; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 26. *Other Obligations.* The Guarantor agrees that, so long as any portion of the Conditional Sale Indebtedness shall be outstanding, the Guarantor will not assume or enter into any other leases of equipment, equipment trust agreements, conditional sale agreements or other liabilities or obligations in connection with the leasing or financing of the acquisition of equipment or other tangible personal property, other than that certain refinancing agreement between it and the United States of America dated as of October 1, 1973, with respect to 57 diesel locomotives (i) if such

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

APPROVED
AS TO FORM _____

[CORPORATE SEAL]

Attest:

W. K. Thomas
~~Secretary~~
ASSISTANT SECRETARY

GENERAL MOTORS CORPORATION

by

Harold J. Smith
Vice President

[CORPORATE SEAL]

Attest:

A. W. Nelson
Assistant Secretary

THE FIRST PENNSYLVANIA BANKING
AND TRUST COMPANY, as Trustee,

by

J. P. Loran
Vice President
ASSISTANT VICE PRESIDENT

RICHARDSON DILWORTH

Richardson Dilworth

Witness:

Arthur H. Williams

[SEAL]

ANDREW L. LEWIS, JR.

Andrew L. Lewis, Jr.

Witness:

Arthur H. Williams

[SEAL]

As Trustees of the Prop-
erty of Reading Com-
pany and not individually

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 23rd day of October, 1973, before me personally appeared **HAROLD L. SMITH**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Zula C. Clair
Notary Public

Notary Public, Illinois, Cook Co.
My Commission Expires JULY 11, 1976

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 8th day of October, 1973, before me personally appeared D.P. Darrin, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

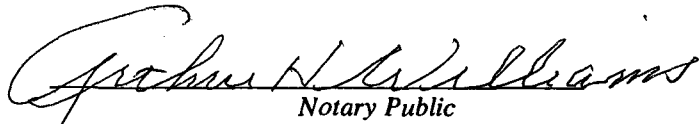
Elizabeth J. Salcedo
Notary Public

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires 3/1/76

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

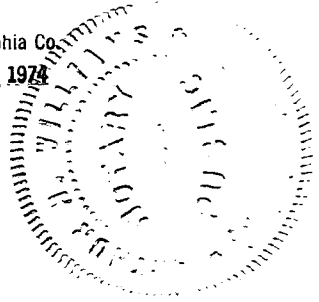
On this 19th day of October, , before me personally appeared
RICHARDSON DILWORTH and ANDREW L. LEWIS, JR., Trustees of the prop-
erty of Reading Company, Debtor, signers and sealers of the foregoing
instrument, and they acknowledged the same to be their free act and deed,
as such Trustees, before me.


Notary Public

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires

[NOTARIAL SEAL]

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 17, 1974



ANNEX A

<u>Type</u>	<u>Builder's Specifications</u>	<u>Quantity</u>	<u>Debtor's Road Numbers (Inclusive)</u>	<u>Average Unit Base Price (including delivery)</u>	<u>Total Base Price</u>	<u>Delivery</u>
1000 h.p. diesel switching locomotives SW 1001	8070	25	2601-2625	\$190,663.25	\$4,766,581.25	October-December, 1973 at LaGrange, Illinois
3000 h.p. diesel road locomotives GP-40-2	8091	4	3671-3674	\$276,228.38	\$1,104,913.52	same
3000 h.p. diesel road locomotives GP-40-2	8091 and 8091-3	1	3675	\$271,637.38	\$ 271,637.38	same
Total					<u>\$6,143,132.15</u>	

0283

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,
12:01 a.m., the Financing Agreement described below has
been assigned to the Consolidated Rail Corporation by the
Trustees of: Reading Company
1 Plymouth Meeting
Plymouth Meeting, PA 19452

The Financing Agreement is a Lease
, dated October 23, 1973 ,
bearing the ICC recordation number 7198 .
The payee's name and address is: The First Pennsylvania Banking and
Trust Company
1500 Chestnut St.
Philadelphia, PA 19102

This Notice of Assignment has been placed in the
file of the ICC recordation number listed above and the entire
assignment is contained in the ICC recordation file stamped
in the margin of this assignment. A copy hereof will be
promptly mailed to the payee listed above for distribution
to the beneficial holder(s) of the Financing Agreement described
in this Notice of Assignment.

Consolidated Rail Corporation